



The Governance  
Institute

**ICSA: The Governance Institute**

Saffron House  
6–10 Kirby Street  
London EC1N 8TS

020 7580 4741  
info@icsa.org.uk  
icsa.org.uk

Transparency and Trust Team  
Department for Business, Innovation and Skills

Submitted by email to: [transparencyandtrust@bis.gsi.gov.uk](mailto:transparencyandtrust@bis.gsi.gov.uk)

31 March 2016

Dear Sirs

**Enhancing transparency of beneficial ownership information of foreign companies**

ICSA: The Governance Institute is the international professional body with primary responsibility for governance. Our Royal Charter requires us to lead 'effective governance and efficient administration of commerce, industry and public affairs' and we are the qualifying body for Chartered Secretaries. Our members are the usual point of contact for engagement between the issuer and its investors in governance matters and corporate reporting. As such, our members are well placed to understand the impact of these proposals for enhancing transparency of beneficial ownership information of foreign companies and we welcome the opportunity to respond to this consultation.

We hope our comments are useful. If you would like to discuss them, or would like further information, please contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Swabey', written in a cursive style.

Peter Swabey  
Policy & Research Director  
Email: [pswabey@icsa.org.uk](mailto:pswabey@icsa.org.uk)



	<b>Respondent type</b>
<input checked="" type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

## Principle

### Question 1 (Page 10)

1. **UK companies will have to provide beneficial ownership information under domestic legislation or declare that there are no people with significant control. Do you agree that foreign companies who want to buy land or property in England and Wales should be under a similar obligation?**

Yes       No       Not sure

Comments: We believe that the UK principle that transparency of ownership is the price to be paid for limited liability should be applied to foreign companies seeking to operate in the UK. Foreign – or for that matter EU – ownership should not enable them to evade this principle.

### Question 2 (Page 10)

2. **Do you have any views on the options for holding information set out above?**

Comments: We believe that the information should be held and maintained on a register managed by Companies House alongside the UK PSC Register.

### Question 3 (Page 10)

3. **Are there any additional considerations for where and how the information is stored that we should consider at this stage?**

Comments: The information should be open to public access under the same rules as apply to the PSC Register – a default of open access, with appropriate protection for those at risk.

## Question 4 (Page 10)

4. **What information about their beneficial ownership should foreign companies be asked to provide?**

Comments: The information should reflect that required under the PSC Register model to avoid any potential confusion where the same individual is submitting information about more than one entity.

## Extent

### Question 5 (Page 10)

5. **Should the requirement to provide beneficial ownership information be applied to foreign companies that already own property or land in England and Wales?**

Yes       No       Not sure

Comments: We see no merit in excluding from scope those foreign companies that already own UK property, although an appropriate transitional regime and sanctions in the event of non-compliance will need to be established.

### Question 6 (Page 10)

6. **Should the Government work with Devolved Administrations to ensure a single approach across the whole of the UK?**

Yes       No       Not sure

Comments: The ideal solution would be for a single regime to apply throughout the UK as regulatory arbitrage of this kind is always undesirable. However, if one or more of the devolved administrations seek to water down the proposals, it would be preferable that the Government work alone.

## Costs and benefits

### Question 7 (Page 10)

7. **What are the costs and benefits to business, the economy and society of transparency of the beneficial ownership of foreign companies that own land/property or wish to enter into the public contracts?**

Comments: More information will be needed before a detailed cost/benefit analysis can be produced but, in principle, it seems to us that the costs and benefits will be similar to those anticipated from the PSC Register.

## What enforcement mechanisms should be used? (Section 5)

### Question 8 (Page 12)

8. How should any new requirements to provide beneficial ownership information of foreign companies purchasing property in the UK be enforced?

Comments: Enforcement of the obligations should be against the relevant company; its directors (or equivalent) and its offending members.

### Question 9 (Page 12)

9. What type of sanctions do you think would be proportionate, effective and dissuasive to ensure beneficial ownership information is obtained:
- a) in the case of new foreign companies acquiring land or property in England and Wales; and
  - b) in the case of existing foreign companies owning land or property in England and Wales (if the obligation to provide beneficial ownership information is extended to them)?

Comments: In either case we would take the view that similar penalties to those applying under the PSC Register arrangements would be appropriate with an option, subject to Court approval, for sequestration where those penalties do not achieve compliance.

## Public procurement (Section 7)

### Questions 10 (Page 16)

10. Do you agree that knowing the beneficial ownership information of those companies participating in public contracting will help the contracting authorities operate a fair and straight forward approach towards the procurement?

Yes       No       Not sure

Comments: Yes – although we would expect that contracting authorities would already have access to this information through the due diligence undertaken on bidding entities. We are unclear as to how this additional requirement will provide any additional information here over and above that which the contracting authorities should already be obtaining.

### Question 11 (Page 17)

11. Do you agree this £10million (procurement) threshold would be appropriate for the ideas set out below?

Yes       No       Not sure

Comments: A contracting authority should satisfy itself as to the ownership of any bidding party, regardless of the size of the contract.

## Question 12 (Page 19)

- 12. What are the potential benefits and burdens for contracting authorities and for bidders of this approach in option A (procurement)? Would it provide a proportionate way to deliver the proposal taking into account the 3-year exclusion that would apply for not providing a beneficial ownership unique identifier number?**

Comments: This seems a reasonable and proportionate approach.

## Question 13 (Page 19)

- 13. What are the potential benefits and burdens for contracting authorities and bidders of the approach in option B (procurement)? Would the 3 year exclusion period be proportionate?**

Comments: We see little practical difference between the various options proposed.

## Questions 14 (Page 20)

- 14. What are the potential benefits and burdens for contracting authorities and bidders of the approach in option C (procurement)?**

Comments: We see little practical difference between the various options proposed.

## Questions 15 (Page 20)

- 15. What are the potential benefits and burdens for contracting authorities and bidders of this variation of option C (procurement)?**

Comments: We see little practical difference between the various options proposed.

## Questions 16 (Page 21)

- 16. How does the approach in option D compare with options A-C in practical terms? What are the potential benefits and burdens of option D for contracting authorities and bidders?**

Comments: We see little practical difference between the various options proposed.

## Questions 17 (Page 21)

- 17. What other issues should be taken into account when considering the options outlined about procurement in the discussion paper?**

Comments: In our opinion, contracting authorities should already be carrying out this level of due diligence before entering into a public contract. We are surprised that this appears not to be the case.

## Questions 18 (Page 21)

18. Are there other options potentially available to Government regarding procurement, which would achieve the same aims overall, that have not been set out here? If so, what are the associated likely practical constraints and benefits?

Comments: None.

## International benefits from the new approach (Section 8)

### Questions 19 (Page 22)

19. Would the approach proposed in this paper help developing countries combat corruption in the manner described above?

Yes       No       Not sure

Comments: We believe that strong leadership in business ethics and transparency from the UK will help developing countries.

### Questions 20 (Page 22)

20. What would be required from foreign governments in terms of access to local company and personal records in order for the England and Wales register to operate in support of developing countries?

Comments: We believe that this would be a matter for the countries concerned.

## Do you have any other comments that might aid the consultation process as a whole?

We believe that this information should be made public in the same way as that for the PSC Register.

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes       No